

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
)	
)	
Plaintiff,)	
)	
vs.)	Case 2:08CR125
)	
)	
BRIAN DAVID MITCHELL,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE DALE A. KIMBALL

OCTOBER 1, 2009

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TESTIMONY OF ELIZABETH ANN SMART

Reported by: KELLY BROWN, HICKEN CSR, RPR, RMR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFFS: OFFICE OF THE US ATTORNEY

BY: BRETT L. TOLMAN

RICHARD LAMBERT

DAVID BACKMAN

ALICIA COOK

Attorneys at Law

185 South State Street, Suite 300

Salt Lake City, Utah 84111

FOR THE DEFENDANT: OFFICE OF THE UTAH FEDERAL DEFENDER

BY: ROBERT STEELE

DOUGLAS PARKER

AUDREY K. JAMES

KENT HART

Attorneys at Law

46 West Broadway, Suite 110

Salt Lake City, Utah 84101

1 SALT LAKE CITY, UTAH, UTAH, THURSDAY, OCTOBER 1, 2009

2 * * * * *

3 (Whereupon, Defendant Brian David Mitchell is singing.)

4 THE COURT: Good morning, everyone.

5 MR. LAMBERT: Good morning, Your Honor.

6 THE COURT: We're here in the matter of the
7 United States of America vs. Brian David Mitchell,
8 2:08-CR-125. The United States is represented by Mr. Brett
9 Tolman, Richard Lambert, David Backman and Alicia Cook.

10 The defendant is present and represented by his
11 counsel Mr. Robert Steele, Mr. Parker Douglas, Ms. Audrey
12 James and Mr. Kent Hart.

13 Mr. Mitchell, you have a constitutional right to be
14 present. However, if you continue singing or otherwise
15 disrupting the proceedings, you will waive that right and you
16 will be taken to a room where we have the audio and video
17 feed.

18 Apparently he's not going to stop.

19 MR. STEELE: Your Honor, we once again made an
20 attempt to interact with him this morning, and we were
21 unsuccessful. I do not believe it's going to stop.

22 THE COURT: I'll ask the marshals to take
23 Mr. Mitchell to the room prepared for the audio and video
24 feed.

25 (Whereupon, Defendant Brian David Mitchell left.)

1 THE COURT: You may call Ms. Smart.

2 MR. TOLMAN: Your Honor, we would call
3 Elizabeth Smart to the stand.

4 THE COURT: We'll begin when Ms. Smart is here and
5 when we're sure that Mr. Mitchell and those who have gone with
6 him are down in the appropriate rooms.

7 (Time lapse.)

8 THE MARSHAL: Your Honor, he's in the cell.

9 THE COURT: Thank you.

10 (Time lapse.)

11 THE MARSHAL: Your Honor, he's in the room, and he
12 can hear everything that's going on in the courtroom.

13 THE COURT: Thank you.

14 (Time lapse.)

15 THE COURT: Come forward and be sworn, please,
16 Ms. Smart, right up here in front of the clerk of court.

17 THE CLERK: Just come stand right here. Please
18 raise your right-hand.

19 ELIZABETH ANN SMART,
20 called as a witness at the request of Plaintiff,

21 having been first duly sworn, was examined

22 and testified as follows:

23 THE WITNESS: Yes.

24 THE CLERK: Thank you. Please take the witness
25 stand right over there.

1 Please tell us your name and spell it for the
2 record.

3 THE WITNESS: Elizabeth Ann Smart.
4 E-L-I-Z-A-B-E-T-H, A-N-N, S-M-A-R-T.

5 THE COURT: You may proceed, Mr. Tolman.

6 MR. TOLMAN: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. TOLMAN:

9 Q. Elizabeth, you have water in front of you in case
10 you need it and Kleenex there, as well. At any point you need
11 a break or would like to stop, let me know, and the Court can
12 help us with that.

13 Elizabeth, what happened to you on June 5th, 2002?

14 A. A man broke into my house and held me at knifepoint
15 and kidnapped me.

16 THE COURT: Excuse me. Ms. Smart, could you lift
17 the mike up a little higher and speak right into it and speak
18 up as best you can. Thank you.

19 Q. BY MR. TOLMAN: You indicate this was the day in
20 which you were kidnapped?

21 A. Yes.

22 Q. And at about what time did this occur?

23 A. In the early morning between 2:00 and 3:00.

24 Q. And where were you?

25 A. I was in my bed at my house in my room.

1 Q. And where was your sister?

2 A. Right next to me in the same bed.

3 Q. Now, the individual that came in, do you now know
4 that individual?

5 A. Yes.

6 Q. Who is that individual?

7 A. Brian David Mitchell.

8 Q. What did he do when he entered into the home?

9 A. He came into my room and held a knife to my throat
10 and threatened me with my life and my family's life to come
11 with him.

12 Q. Did he do anything to determine whether it was you
13 or your sister he was taking?

14 A. Yes.

15 Q. What did he do?

16 A. He placed his hands on my chest.

17 Q. What happened next?

18 A. He then put the knife up to my neck and threatened
19 me and said that if I didn't come with him -- well, said, told
20 me to get up quietly, and if I -- if I didn't, then he would
21 kill me and my family.

22 Q. What was -- what was his voice like?

23 A. It was quiet. He was whispering it, but still loud
24 enough that it could wake someone.

25 Q. How was he dressed?

1 A. In dark clothes.

2 Q. What types of clothes?

3 A. Sweats, sweatshirt, stocking cap, tennis shoes.

4 Q. Was he carrying anything with him? You indicated a
5 knife. Was there anything else he was carrying?

6 A. Umm, to the best of my memory that's all I can
7 remember.

8 Q. We'll come back to that.

9 What instructions did he give you? You indicated
10 that he threatened you?

11 A. (Witness indicates by nodding head up and down.)

12 Q. And he threatened your family?

13 A. (Witness indicates by nodding head up and down.)

14 Q. Did he indicate to you that you had to grab
15 anything?

16 A. He told me to get shoes. And when I reached for
17 some normal slip-on shoes, he said to take the tennis shoes.

18 Q. So you reached for slip-on shoes, and he directed
19 you and indicated you should take tennis shoes; is that right?

20 A. Yes.

21 Q. Okay. Did you ask him why he was taking you?

22 A. Yes, I did.

23 Q. What did he say?

24 A. He said he was taking me hostage and holding me for
25 ransom.

1 Q. Would you later learn that that was a lie?

2 A. Yes.

3 Q. Did he have the knife to your throat the entire
4 time?

5 A. He had it to my throat, and then he held it to my
6 back as he took me away from my house and then as he took me
7 up into the mountains.

8 Q. Did he continue to threaten you as he took you out
9 of the home and out in the mountains?

10 A. Yes.

11 Q. Once he has you outside of the home, did you
12 observe whether he was carrying anything with him? Did he
13 have a flashlight?

14 A. Yes, he had a flashlight.

15 Q. Did he have any coats? Any additional clothing?

16 A. I can't remember right now.

17 Q. Any raincoats?

18 A. I just can't remember anymore.

19 Q. That's all right.

20 Did he have any socks? Did he ask you to put on
21 socks?

22 A. No.

23 Q. No?

24 A. No.

25 Q. What did he say about that?

1 A. Well, he didn't -- I just had my bare feet in my
2 shoes.

3 Q. Now, at some point did he pick up water along the
4 way? Do you recall whether or not he had placed any water
5 outside?

6 A. No, I don't recall.

7 Q. Elizabeth, was he concerned about being caught?

8 A. Yes.

9 Q. What did he do to avoid getting caught?

10 A. He had -- he forced me to duck down behind some
11 bushes before we crossed the street to wait for a car to pass
12 by, and then we moved at a quick pace up the trail till we
13 eventually turned off the trail and went up the backside of
14 the canyon where nobody had been. I mean, there was no trail.

15 Q. And where did he take you ultimately?

16 A. He took me in a canyon behind my house about three
17 miles up close to the top of the mountain ridge under -- there
18 were lots of trees surrounding is where he had a camp he had
19 been at for a while.

20 Q. Where he had a camp?

21 A. Uh-huh (affirmative).

22 Q. And was that where Wanda was?

23 A. Yes.

24 Q. Elizabeth, what was the first thing he did to you
25 when he took you to the camp?

1 A. He took me inside the tent where Wanda then tried
2 to force me to bathe. After arguing with her, she eventually
3 just conceded to wash my feet. And then she told me to change
4 out of my pajamas into a robe type of garment. And when I
5 refused, she said that if I didn't then she would have
6 Brian Mitchell come in and rip my pajamas off.

7 So at that point I went ahead and put the robe on,
8 after which he came inside the tent and performed a ceremony
9 which was to marry me to him. After that he proceeded to rape
10 me.

11 Q. In those early days in that camp, what did he do to
12 ensure that you didn't escape?

13 A. He had a big cable bolted onto my leg which was
14 strung between two trees. And there was a lock that would
15 slide between the two trees that was able to take off.
16 However, he had the key around his neck the entire time.

17 Q. So there was a cable lock around your leg?

18 A. Well, the cable was bolted to my leg, and then
19 there were two trees. There was another piece of cable strung
20 through with a lock --

21 Q. Connected to the cable to your leg?

22 A. -- connected to both cables.

23 Q. And about how long was that cable?

24 A. The cable that was on my leg was probably 10-feet
25 long, and the cable that ran between the two trees was

1 probably 15- to 20-feet long.

2 Q. And at any point did you ever have the key or the
3 ability to take that cable off?

4 A. No.

5 Q. Did he have the key on him?

6 A. Yes.

7 Q. Elizabeth, was he aware police were looking for you
8 and him?

9 A. Yes, he was.

10 Q. Did he ever indicate to you that he knew he'd go to
11 jail if he was caught?

12 A. Yes. The night I was kidnapped, I turned to him
13 and I said, you know you're going to go to jail for this if
14 you get caught. And he said, yes. And I said that, if you
15 let me go right now, then, you know, I would speak in his
16 behalf. However, he did not. He didn't let me go, and he
17 knew full well he was going to go to jail.

18 Q. Now, you indicated that the first thing he did was
19 to rape you when you were in this camp. Without going into
20 any of the details, how often did he rape you, Elizabeth?

21 A. On a daily basis up to three or four times.

22 Q. And during your nine months with the defendant,
23 Elizabeth, what was the predominate focus?

24 A. Sex.

25 Q. Would you agree that the defendant spoke

1 religiously or about religion often?

2 A. Yes.

3 Q. How is it that sex was his focus and not religion,
4 then?

5 A. He used religion to get what he wanted. He had an
6 excuse for everything he did with a religious side to it.

7 Q. Was there ever a time he did not talk about sex or
8 want sex?

9 A. No.

10 Q. Did he ever give you alcohol or drugs in order to
11 lower your resistance to have sex with you?

12 A. Yes.

13 Q. Did he ever show you pornography?

14 A. Yes.

15 Q. Why did he say he was showing you pornography?

16 A. He said that first I had to be humbled and to sink
17 below all things before arising above all things.

18 Q. Did he use religion to justify his behavior?

19 MR. STEELE: Objection, Your Honor; calls for
20 speculation.

21 THE WITNESS: Yes.

22 Q. BY MR. TOLMAN: Did you observe --

23 THE COURT: Overruled.

24 MR. TOLMAN: Thank you.

25 Q. BY MR. TOLMAN: Go ahead and answer. Did he use

1 religion to justify his behavior?

2 A. Yes.

3 Q. How would he do that?

4 A. Anything that I showed resistance or hesitation to,
5 he would turn to me and say, the Lord has commanded you to do
6 this. You have to experience the lowest form to be -- the
7 lowest form of humanity to experience the highest.

8 Q. Did he ever try to convince you that having sex
9 with him was no big deal or normal?

10 A. Yes.

11 Q. What would he say?

12 A. He said that's what a husband and a wife do.

13 Q. Was the defendant crude?

14 A. Yes.

15 Q. Was he vulgar?

16 A. Yes.

17 Q. Inappropriate about sex?

18 A. Yes.

19 Q. Would he use vulgar terms to describe parts of the
20 male and female body?

21 A. Yes.

22 Q. Now, there were times in which he would leave the
23 camp; correct?

24 A. Correct.

25 Q. And what would he say he was going to do?

1 A. He was going to minister to the world and to get
2 supplies.

3 Q. When he came back, what was the first thing he
4 wanted to do or talk about?

5 A. Well, usually when he would go down it was after a
6 day or so not eating, so he usually would bring back something
7 to eat. And then after that, he would go on to rape me.

8 Q. Did he ever sing or shout what he intended to do to
9 you when he returned to camp?

10 A. Yes.

11 Q. And what did he say?

12 A. He did. He would come up the mountainside yelling,
13 I'm going to fuck your eyes out.

14 Q. Did he say this on several occasions?

15 A. Yes.

16 Q. Would he say similarly offensive vulgar things to
17 you?

18 A. Yes.

19 Q. Elizabeth, did you ever get a break from being
20 raped by the defendant?

21 A. Well, yes. But it was when Wanda would get very
22 upset with him. There was a period of time, and she said, all
23 you do is lust after her. And so in order to calm Wanda down,
24 he said, I think I've received a revelation, and I think there
25 will be -- we'll switch off time periods.

1 But there wasn't an actual 24-hour period that he
2 wasn't able to rape me.

3 Q. So during this so-called break, he's responding to
4 Wanda's objections about how lustful he is toward you?

5 A. Yes.

6 Q. Is that correct?

7 So what did he do to solve that problem?

8 A. He would set apart, like, about every other night
9 he would have to spend with her. But it didn't last very
10 long.

11 Q. So was he setting up some sort of schedule?

12 A. Yes.

13 Q. Okay. And the schedule was some form of
14 alternating between you and Wanda?

15 A. Yes.

16 Q. Did he adhere to the schedule?

17 A. He did for a little while. But there was an
18 occasion when he took me to get water with him, hike up to
19 this underground stream and get water. And on the way up, he
20 turned to me and he said how much he needed me to have sex
21 with him right then and there and that Wanda would never know
22 and that she would understand and it would be okay and that
23 she didn't -- nobody would find out. It would be okay.

24 Q. And did you say no to him?

25 A. Yes.

1 Q. And how did that make you feel to say no to him on
2 that occasion?

3 A. Wonderful.

4 Q. Did the defendant ever try to convince you that it
5 would be bad if he stopped having sex with you?

6 A. Yes.

7 Q. What happened?

8 A. He said that -- one time he was trying to, and I
9 bit him. And he said that if I ever did that again, he would
10 never have sex with me again and I would be the most miserable
11 woman in the world. However, I mean, it didn't make a
12 difference that he said that. I mean, he didn't -- it didn't
13 stop him.

14 Q. Elizabeth, would you agree that someone can be
15 religious but not necessarily spiritual or Christian or
16 Christlike?

17 A. Yes.

18 Q. And vice versa, someone could be very Christian or
19 Christlike but not necessarily religious or go to the church?

20 A. Yes.

21 Q. What was the defendant like?

22 A. He was religious but not spiritual, not Christlike.

23 Q. Did you observe him have -- to have empathy or
24 display kindness toward others?

25 A. No.

1 Q. Did you ever, Elizabeth, observe him to do an act
2 of kindness or charity toward another person?

3 A. No.

4 Q. Did he think highly of himself?

5 A. Yes.

6 Q. What was his opinion of himself?

7 A. That he was the Davidic king, that he was the
8 Lord's servant, and he was doing the Lord's work.

9 Q. Did you observe him use religion to help others, or
10 did he use it to get what he wanted?

11 A. To get what he wanted.

12 Q. How would he do this?

13 A. He used religion to get into the home of the Kemp
14 family. They invited -- well, he was looking for another
15 young girl to kidnap, and he went to an LDS ward posing as an
16 investigator. And there was a nice couple there that invited
17 him into their home and invited him to dinner, at which point
18 he saw a picture of their daughter. But he used religion to
19 get into their home to pose as an investigator.

20 Q. So would he use religion to get his needs met, his
21 basic needs?

22 A. Yes.

23 Q. Food?

24 A. Yes.

25 Q. Water?

1 A. Yes.

2 Q. What about for alcohol?

3 A. Yes.

4 Q. Drugs?

5 A. Yes.

6 Q. Sex?

7 A. Yes.

8 Q. Did you observe him use religion to get all of
9 those things?

10 A. Yes.

11 Q. Did the defendant claim to receive revelation?

12 A. Yes.

13 Q. And would he give blessings and receive revelation?

14 A. Yes.

15 Q. Would he give blessings to you and to Wanda?

16 A. He gave them mainly to Wanda. But there were
17 several occasions that he gave me a blessing.

18 Q. What was the purpose of the blessings he would
19 give?

20 MR. STEELE: Objection; calls for speculation.

21 THE COURT: Well, it's sustained as to his
22 understanding. But she can testify as to her understanding.

23 MR. TOLMAN: Sure.

24 THE COURT: What she thought his purpose was.

25 Q. BY MR. TOLMAN: Elizabeth, what did you understand,

1 Elizabeth, the purpose of giving the blessings to be?

2 A. Wanda would get very upset with him, and she would
3 just become irate. And the only way to calm her down was to
4 turn to her and to say that he needed to give her a blessing.
5 And then in the blessing he would just say what a wonderful
6 daughter of God she was and she was going to be the mother of
7 Zion, and she was going to bring forth his air to the throne
8 and just say what a queen she really was.

9 Q. Would it have a calming effect on Wanda?

10 A. Yes.

11 Q. Would he be able to get what he wanted through use
12 of the blessings?

13 A. Yes.

14 Q. Did the defendant ever receive a revelation that he
15 should give up anything?

16 A. No.

17 Q. To give up sex?

18 A. No.

19 Q. Drugs?

20 A. No.

21 Q. Alcohol?

22 A. No.

23 Q. Pornography?

24 A. No.

25 Q. Did the defendant ever have a religious fast from

1 food, water, sex, alcohol or drugs?

2 A. He had a fast from food before, but that also may
3 have been because there was no food to eat.

4 Q. Did he ever go on a word fast where he would not
5 speak for long periods of time?

6 A. No.

7 Q. Elizabeth, in your time with the defendant, did you
8 ever observe the defendant feed the hungry?

9 A. No.

10 Q. Clothe the naked?

11 A. No.

12 Q. Or visit the sick or afflicted?

13 A. No.

14 Q. Were you ever sick during this nine-month period of
15 time?

16 A. There was a time when he gave me too much to drink,
17 which I ended up vomiting up all over myself, and he let --

18 Q. Did he care for you?

19 A. No. He let me lie face down in my vomit for the
20 entire night until I woke the next day.

21 Q. What did he say after he'd allowed you to sleep
22 through the night with vomit on you the next morning?

23 A. He said that was showing my true state, that I was
24 laying face down in my vomit.

25 Q. Did he ever acknowledge that what he was doing was

1 wrong?

2 A. No.

3 Q. Did you ever question him on the inconsistency of
4 his conduct with the principles of religion?

5 A. Yes.

6 Q. And what did he say?

7 A. He said that the world was wrong. He said the
8 world was a wicked place and that I'd been brainwashed by the
9 world, and that he was the Lord's servant and he was doing the
10 Lord's will.

11 Q. And Elizabeth, you were how old at this time?

12 A. 14.

13 Q. In your observation of the defendant, Elizabeth,
14 did you observe him to be manipulative?

15 A. Yes.

16 Q. Did you observe him to try to manipulate Wanda?

17 A. Yes.

18 Q. Did he try to manipulate you?

19 A. Yes.

20 Q. Did you observe him manipulate or try to manipulate
21 others?

22 A. Yes.

23 Q. And what would he do to try to manipulate others?

24 A. He would not -- there was one younger man in
25 particular who, he worked at Wild Oats, and he was --

1 Q. Wild Oats, the grocery store?

2 A. Yeah. The past grocery store which has now been
3 replaced by Whole Foods.

4 Q. Uh-huh (affirmative).

5 A. He worked there, and he used to just run things
6 across the scanner so it looked like he was scanning them, but
7 wasn't. And he just put them in a bag and give them to
8 Brian David Mitchell. And --

9 Q. Let me have you back up. So there was an
10 individual working at this grocery store that the defendant
11 would go to to get groceries from him?

12 A. Yes.

13 Q. And did he go to him because he could get advantage
14 from him?

15 A. Yes.

16 Q. And what was that advantage? He would scan them?

17 A. He wouldn't actually scan them. He just made it
18 look like he was scanning them. So in other words, he was
19 stealing from the store.

20 Q. And he was manipulating this employee in order to
21 accomplish that?

22 A. Yes. The young man was not -- I mean, he was on
23 the edgy side, like he had the -- he dyed his hair dark and
24 drank and did drugs, went to raves. I mean, that's just to
25 the best of my knowledge how he was. And Brian never

1 condemned him for doing it. And they would talk about
2 spiritual-related things or religious-related things and talk
3 about God and how God is no respecter of persons. And so
4 because of his acceptance, I suppose this young man felt
5 accepted by Brian, that he was willing to help Brian out.

6 Q. Could the defendant turn religion on and off in
7 order to get something he wanted?

8 A. Yes.

9 Q. And did you observe him doing that?

10 A. Yes.

11 Q. Did you observe him turn religion on or off to get
12 sex or drugs or food or transportation?

13 A. Yes.

14 Q. You've indicated the Kemp family. Was that an
15 instance in which he turned religion on or off?

16 A. Yes.

17 MR. STEELE: Objection, Your Honor. That would be
18 speculation. And she had no direct knowledge other than what
19 he said.

20 THE COURT: Well, she can testify as to what he
21 said and what her impressions were of what he said.

22 Ask a different question, Mr. Tolman.

23 Q. BY MR. TOLMAN: I will ask you about the Kemps.
24 Did he tell you about meeting the Kemps?

25 A. Yes.

1 Q. And what happened with the Kemps?

2 A. He said that he went to this LDS meeting and that
3 they were just very kind to him. And after the meeting, they
4 invited him into their home for Sunday dinner.

5 Q. Let me have you pause. What was he wearing when he
6 went with the Kemps?

7 A. It was more casual attire. He had his hair pulled
8 back in a ponytail, and he had an elastic around his beard so
9 it was --

10 Q. Was he in that robe that he typically was in, the
11 religious-type robe?

12 A. No. No.

13 Q. Was he in regular clothes?

14 A. Yes.

15 Q. Did he indicate to you that he pretended to be
16 someone else to them?

17 A. Yes.

18 Q. And what did he say?

19 A. He said that he pretended to be an investigator in
20 the church, and that by doing that they'd invited him into
21 their home. And he saw a picture of a young girl on the
22 piano, and he asked them if it was their granddaughter, and
23 they laughed. And the wife said, no, it's my daughter. I'm
24 divorced from my first husband, and she spends every other
25 weekend and Wednesdays here.

1 And so he asked a few more questions about her, and
2 then went on as if nothing was normal -- as if nothing was
3 abnormal.

4 Q. Did he tell you what the purpose of his meeting
5 with the Kemps was?

6 A. Yes. He said he was going out to find the second
7 wife.

8 Q. Did he indicate to you about the age of this girl
9 that he noticed in the photo?

10 A. Yes. He said she looked about my age.

11 Q. Elizabeth, did the defendant act differently with
12 those that agreed with him versus those that disagreed with
13 him?

14 A. Yes.

15 Q. How would he act?

16 A. Those that agreed with him he would say, God bless
17 you, and, yes, and he would be just very agreeable. And those
18 that didn't agree with him, he would ignore or he would walk
19 away. He would start singing. He would call them to
20 repentance and then leave them.

21 Q. So there were various things he would do. He would
22 walk away or he would ignore them?

23 A. Yes.

24 Q. He would sing?

25 A. Yes.

1 Q. But he was different --

2 A. Yes.

3 Q. -- depending on whether someone would agree with
4 him or didn't?

5 A. Yes.

6 Q. At one point, Elizabeth, the decision was made to
7 leave Utah and to go to San Diego?

8 A. Winter was starting to get closer, and the
9 underground house that they were digging was nowhere near
10 being finished. And so they decided that they would have to
11 move somewhere warmer. And then he said that he felt that
12 that was what the Lord wanted him to do and that they were
13 going to go find wife number two.

14 Q. Was there any other reason why he wanted to leave
15 Utah?

16 A. As far as I know, that was it, just away for the
17 winter and to find another young woman.

18 Q. It was beginning to be inhospitable at the camp?

19 MR. STEELE: Objection; leading.

20 THE COURT: It is. Sustained.

21 Q. BY MR. TOLMAN: Was it beginning to be cold in
22 Utah?

23 A. Yes.

24 Q. And was that a concern of his?

25 A. Yes.

1 Q. At one point, while you were in San Diego, there
2 was an incident in which the defendant was arrested. Did he
3 tell you about that?

4 A. Yes, he did.

5 Q. What did he say happened?

6 A. He said that he -- well, we didn't have any food
7 and so he said he was going to go minister. And he said that
8 he went down to the little town we were staying nearby,
9 Lakeside. And he said that the first thing he did was instead
10 of getting, buying a bus fare, he went to a convenient store
11 and bought a beer. And then he walked around Lakeside, and
12 there was a woman there who had a cart that she was pushing,
13 and she had --

14 Q. A cart that she was pushing?

15 A. Yeah. One of those --

16 Q. Like a shopping cart?

17 A. -- little wire like pull-along things, I guess --

18 Q. Okay.

19 A. -- that a lot of people use.

20 Q. Okay.

21 A. And she had some prescription medication on the top
22 of it. And he asked her for some, and she said no. And she
23 went into a store or she went -- and she left the cart for a
24 minute, and he stole the prescription medication and took a
25 few pills.

1 Q. Do you know what they were?

2 A. I don't know what they were.

3 And then he broke in a church nearby. I'm not sure
4 what denomination it was or what building it was. But he
5 broke in, he broke a window. And he passed out in there
6 because of the alcohol and of the drugs. And the next morning
7 he was awoken by some police officers and I guess a young
8 woman that worked there or that had come in, I'm not sure what
9 for. And he was then taken to --

10 Q. Was he arrested?

11 A. Yes, he was.

12 Q. And did he tell you about being booked into jail?

13 A. Yes.

14 Q. What did he say?

15 A. He said that he was sitting cross-legged on the
16 floor, and that he had some worn-out long johns thermal
17 pajama-type on, well, underneath his robes, and that his robe
18 was pulled up high and there was a big hole in the crotch of
19 the thermal underwear. And it was just right where his
20 private parts were, and he said that the woman booking him in
21 and the other people there that were booking him in, they
22 could see everything and that they liked it, what they saw.

23 Q. Did he indicate that he had a lawyer for that
24 episode?

25 A. Yes, he did.

1 Q. What did he say about his lawyer?

2 A. He said that his lawyer was a bright, young man and
3 that his -- when he went into the judge, he pleaded not
4 guilty. And the lawyer advised him to plead guilty, that he
5 would have to pay for the replacement of the window and do
6 some hours of community service.

7 Q. Did he indicate to you that he followed the advice
8 of his lawyer?

9 A. He said that he did go ahead and plead guilty to
10 that, and then he was released.

11 Q. Where were you and Wanda while he was in jail?

12 A. Wanda was keeping guard over me, and we were up on
13 the mountainside in Lakeside where they had set up camp. And
14 it had been a holiday weekend when he went out. And I
15 cannot -- I'm not quite sure, I think it was President's Day
16 or Martin Luther King, Jr., Day, I don't remember which
17 holiday it was, but he had to sit in jail for three days
18 before he could go before the judge. And since it was the
19 holiday weekend, it had to be business days. And so it ended
20 up being an actual six to seven days before he came back to
21 camp.

22 Q. If he had indicated to the judge that the three of
23 you were staying with friends, was he lying?

24 A. Yes.

25 Q. Elizabeth, did you or Wanda ever have to explain to

1 him the legal system?

2 A. No.

3 Q. Or the charges against him?

4 A. No.

5 Q. Or have to explain anything he was confused or
6 incapable of understanding about what happened to him?

7 A. No. He understood a lot. He was a very
8 intelligent -- well, smart. He knew a lot of things.

9 Q. Did he ever appear to be bewildered, confused or
10 out of control?

11 A. No.

12 Q. Did you observe the defendant sing?

13 A. Yes.

14 Q. Did he sing often?

15 A. Yes.

16 Q. Did you ever observe him to sing in order to
17 manipulate someone or a situation he was in?

18 A. Yes.

19 Q. Was he capable of turning the singing off and on
20 when he needed to?

21 A. Yes.

22 Q. Did his desire or compulsion to sing ever get in
23 the way of something he wanted?

24 A. No.

25 Q. Elizabeth, did he ever when he was trying to get

1 either sex, food, drugs, alcohol or transportation
2 spontaneously burst into singing so that it kept him from
3 communicating what he wanted?

4 A. No.

5 MR. STEELE: Objection; speculation.

6 MR. TOLMAN: I don't think that's speculation, Your
7 Honor.

8 THE COURT: She never heard it; right?
9 That's what your testimony is?

10 THE WITNESS: Right.

11 THE COURT: Yeah. She's entitled to say that.

12 Q. BY MR. TOLMAN: Did you observe him attempt to get
13 sex, drugs, food, transportation?

14 A. Yes.

15 Q. Did he ever burst into singing so that it prevented
16 him from getting those things?

17 A. No.

18 Q. Were there times when you were confronted by law
19 enforcement during your time with the defendant?

20 A. Yes.

21 Q. When were those occasions?

22 A. There was a time in the Salt Lake City Library
23 before it was remodeled when a detective approached him and
24 had asked that I remove the veil and head covering that they
25 had me wear always, and he said that I couldn't. It was part

1 of our religion, and there was no possible way I could do
2 that.

3 Q. Did he ever burst into singing when he was
4 confronted by law enforcement?

5 A. No.

6 Q. Did you or Wanda ever have to intervene on his
7 behalf because he was not in control?

8 A. No.

9 Q. Or because he had burst out into singing?

10 A. No.

11 Q. Or because there was some concept that he did not
12 understand?

13 A. No.

14 Q. Elizabeth, did you ever get the sense that the
15 defendant enjoyed or got a kick out of fooling others?

16 A. Yes.

17 Q. What did he do or say that gave you this
18 impression?

19 A. He would just say that, like he'd be laughing and
20 just say, oh, they think they're so smart. They think they're
21 guiding me to the light when really they don't know that I'm
22 the Davidic king, that I know all this. I could dance circles
23 around them. They don't know who they're dealing with.

24 Q. Did he brag about how much he knew about different
25 topics or subjects?

1 A. Yes.

2 Q. What would he say?

3 A. He talked about -- I mean, anything that ever came
4 up, he had to be right. He had to know about it. Like he had
5 to be the authority there on that topic.

6 Q. Did that include things that were religious or not
7 religious?

8 A. Yes.

9 Q. Any topic?

10 A. Yes.

11 Q. Is it fair to say in this nine-month period of
12 time, Elizabeth, with the defendant that you came across a
13 number of individuals?

14 A. Yes.

15 Q. Considering all of these people you encountered
16 during your travels with the defendant, did anyone ever
17 suggest to you or Wanda that you heard that the defendant
18 needed professional help?

19 A. No.

20 Q. That you should get him to a hospital or get him
21 help?

22 A. No.

23 Q. In your observations of the defendant, did you
24 conclude he was intelligent?

25 A. Yes.

1 Q. What made you conclude this?

2 A. He did, he knew a lot about a lot of different
3 things. He told me about his previous life, about what he
4 did, what he'd done. He was a very capable, intelligent human
5 being.

6 Q. Was he articulate?

7 A. Yes.

8 Q. Was the defendant honest?

9 A. No.

10 MR. STEELE: Objection, Your Honor.

11 Q. BY MR. TOLMAN: Did you --

12 THE COURT: As to her understanding. She doesn't
13 believe he was honest. She's entitled to say that.

14 Q. BY MR. TOLMAN: Do you believe he was honest,
15 Elizabeth?

16 A. No.

17 Q. Did you observe him lie?

18 A. Yes.

19 Q. Was lying difficult for him, or did it come easy?

20 A. It was easy.

21 Q. Was he convincing?

22 A. To many people, I think so.

23 Q. Were you convinced?

24 A. No.

25 Q. Others were convinced by him?

1 A. Yes.

2 Q. Did he indicate to you that he had the Kemps
3 deceived?

4 A. Yes.

5 Q. You indicated earlier that he was determined not to
6 get caught. How determined was the defendant not to get
7 caught?

8 A. He said that he would kill anybody who came into
9 the camp or he would kill me if I ever tried to escape or
10 yelled out or did anything that was not in accordance with
11 what he wanted.

12 Q. Did he give you instructions if you were ever
13 confronted by someone?

14 A. Yes.

15 Q. And what were those instructions?

16 A. He told me to say that we were traveling ministers
17 and that he was my father and that Wanda was my mother and
18 that I --

19 Q. Did he tell you to refer to them as father and
20 mother in that instance?

21 A. Yes.

22 Q. Okay. What else?

23 A. And he told me to say that I had been home-schooled
24 and that we had no permanent address, that we just traveled
25 around ministering to the different people.

1 Q. Did he tell you to use a name?

2 A. Yes.

3 Q. What was that name?

4 A. Augustine Marshall.

5 Q. Augustine Marshall?

6 A. Yes.

7 Q. How did he -- do you know how he came up with that
8 name?

9 A. It was after the month August.

10 Q. What about for Wanda, did he have a name for Wanda?

11 A. Yes.

12 Q. And what was that name?

13 A. Juliette.

14 Q. Was there a meaning behind Juliette?

15 A. The month of July.

16 Q. Did he have different names for himself that he
17 would use?

18 A. Yes.

19 Q. What were those names?

20 A. Well, there was his name that he went by Emmanuel
21 David Isaiah. And then he went by David Shirlson. And David
22 was his middle name, and Shirlson, his father's name was
23 Shirl, and he was Shirl's son, so that's how he came with that
24 name. And then he gave a fake name when he was booked in the
25 San Diego -- when he was being held in San Diego. He gave a

1 different name.

2 Q. Did he tell you what that name was?

3 A. Michael Jensen.

4 Q. Did he ever quiz you on what you were supposed to
5 say?

6 A. Yes.

7 Q. Did he ever, Elizabeth, in the nine months that you
8 were with him, did he ever introduce you to others as his
9 bride?

10 A. No.

11 Q. Ever publically acknowledge that you were his
12 bride?

13 A. No.

14 Q. Besides you or Wanda, did he ever tell anyone else
15 that he had been commanded to marry several young girls?

16 THE COURT: You mean as far as she knows?

17 Q. BY MR. TOLMAN: As far as you know, did you ever
18 hear him tell anyone else?

19 A. No.

20 Q. Did you ever observe him tell anyone else that he
21 was to plunder or steal young girls to be his brides?

22 A. No.

23 Q. Did he tell you and Wanda that?

24 A. Yes.

25 Q. You indicated that there was some instances when he

1 was confronted or you all were confronted by law enforcement.

2 Did you observe him talk his way out of the situation?

3 A. Yes.

4 Q. Did he have an ability to argue on his behalf?

5 A. Yes.

6 Q. How was he in an argument?

7 A. Forceful, determined.

8 Q. Was he quick on his feet?

9 A. Yes.

10 Q. Could he adapt to his surroundings?

11 A. Yes.

12 MR. STEELE: Objection, Your Honor. This is

13 leading.

14 THE COURT: Try not to lead her, Mr. Tolman.

15 MR. TOLMAN: Thanks, Your Honor.

16 Q. BY MR. TOLMAN: Did you observe him adapt to the
17 people he was with or the circumstance he was in?

18 A. Yes.

19 Q. Did he ever indicate to you that he had studied
20 psychology, mind control and hypnosis?

21 A. Yes.

22 Q. What did he say about it?

23 A. He spoke about how people thought. And he talked
24 about a time in his life when he was in Southern Utah, I
25 believe, and he was with his brother. And he had been -- he

1 had some books that he had been reading that were on like
2 hypnosis and witchcraft, I think.

3 Q. Did he ever tell you about getting away with things
4 in his past?

5 A. Yes.

6 Q. What did he say?

7 A. He talked about how in high school, he had -- he
8 was one of the graduating seniors, and there was a girl who
9 was younger, and she was physically mature for her age, and
10 how he just came up behind her and stuck his hand down her
11 shirt and then walked away and nothing ever happened.

12 And he talked about his two previous marriages and
13 how he had been accused with molesting his second wife's
14 youngest daughter and how nothing ever happened because of
15 that, like how he was able to walkway from that.

16 Q. Did he ever talk about being able to walk away from
17 financial debt or other obligations?

18 A. Yes. He talked about how he had walked away from
19 an apartment lease. He talked about how he had walked away
20 from a big fifth-wheel trailer that they had taken up to
21 Idaho, and he stopped making payments on it. And they just
22 left it on some property sitting up there and walked away from
23 it.

24 He talked about how he -- the LDS Church had called
25 an ex-communication hearing and how he just never showed up to

1 it, and so he walked away from that.

2 And he talked about how his mother had gotten a
3 restraining order put on him, and he just, I mean, he didn't
4 care. He just walked away from that.

5 Q. Elizabeth, are you aware that the defendant was
6 writing a book called the Book of Emmanuel David Isaiah?

7 A. Yes.

8 Q. Are you aware that he wrote in this book after his
9 capture?

10 A. Yes.

11 Q. Did he ever tell you or try to convince you or
12 Wanda that you heard prior to his capture that he did not use
13 a weapon when he kidnapped you?

14 A. No.

15 Q. Or that he held -- that you held the key to the
16 cable you were locked with?

17 A. No.

18 Q. That you could have gotten away?

19 A. No.

20 Q. That your parents knew you were all right?

21 A. No.

22 Q. That your parents invited him to your home that
23 night he kidnapped you?

24 A. No.

25 Q. That your parents had removed the lock on your door

1 and turned off the security alarm for him to take you that
2 night?

3 A. No.

4 Q. Ever tell you or try to convince you or Wanda that
5 you heard that you had opened the window for him to get into
6 the house?

7 A. No.

8 Q. Ever tell you or Wanda --

9 MR. STEELE: Objection, Your Honor. There's no
10 foundation for these questions. There's nothing that they're
11 based on.

12 MR. TOLMAN: Your Honor, I'm asking whether or
13 not -- we intend to show at the competency hearing that he
14 made these writings. And I'm asking if he ever while he was
15 with her attempted to try to convince her of the claims he
16 would later make.

17 THE COURT: Overruled. Go ahead.

18 Q. BY MR. TOLMAN: Did he ever tell you or Wanda that
19 you had heard the Lord's commands to go with him, and that's
20 why you did?

21 A. No.

22 Q. Were any of these claims true, Elizabeth?

23 A. No.

24 Q. Would he have been able to convince you that any of
25 these claims were true?

1 A. No.

2 Q. This was at all times against your will?

3 A. Yes.

4 Q. Did he acknowledge to you that what he was doing
5 was against the law?

6 A. Yes.

7 Q. Did he have a knowledge of the legal system?

8 A. Yes.

9 Q. Did he explain that knowledge to you?

10 A. Yes.

11 Q. Did he have knowledge of how the government works?

12 A. Yes.

13 Q. Did he indicate what would happen to him if he were
14 caught?

15 A. Yes.

16 Q. Finally, Elizabeth, what words would you use to
17 describe the defendant's character?

18 A. Evil, wicked, manipulative, sneaky, slimy, selfish,
19 greedy, not spiritual, not religious, not close to God.

20 MR. TOLMAN: Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Tolman.

22 Mr. Steele, you may cross-examine.

23 MR. STEELE: Thank you, Your Honor.

24 //

25 //

CROSS-EXAMINATION

BY MR. STEELE:

Q. Do you need a break or water?

A. (Witness indicates by shaking head side to side.)

THE COURT: Mr. Steele, speak right in the mike so people can hear you.

MR. STEELE: Okay. I'm significantly shorter than Mr. Tolman.

THE COURT: It goes into the other room so we need to hear.

MR. STEELE: Okay.

THE COURT: Go ahead.

Q. BY MR. STEELE: You talked about him being concerned about getting caught that first night outside of your house or near your house. Do you remember talking about that?

A. Yes.

Q. Okay. And you said that he pulled you down behind a bush?

A. Yes.

Q. Why did he do that?

A. There was a passing cop car, and he didn't want to be caught.

Q. What did he say after that, after the cop car passed?

1 A. To the best of my memory was, the Lord is with us.

2 Q. Did he ever say something like, you know, if this
3 were to be true don't let them find us?

4 A. Yes.

5 Q. So do you remember when he said that?

6 A. It's been so long. But to the best of my memory,
7 it was as the car was driving by.

8 Q. Okay. He performed a marriage ceremony that night.
9 I mean, was this a lengthy thing? A very short thing?

10 A. Very short.

11 Q. Okay. What did he say, do you remember?

12 A. He just said that in the power that was vested in
13 him he bonded me on heaven -- or that I would be bound in
14 heaven as I would be here on earth to him to be his wife. I
15 screamed no. But that did not have any affect on him. And he
16 said that if I were to scream then he would kill me.

17 Q. And I imagine that was shocking to you, the
18 marriage ceremony.

19 A. Yes.

20 Q. You didn't see that coming at all?

21 A. No.

22 THE COURT: The reporter is having trouble hearing
23 you, Mr. Steele.

24 MR. STEELE: I'm sorry about that.

25 Q. BY MR. STEELE: You spent a lot of time talking.

1 He spent a lot of time talking --

2 A. Yes.

3 Q. -- throughout the day. What kinds of things did he
4 talk about to you?

5 A. He talked about a lot of things. He talked about
6 his past experiences. He talked about his previous marriages.
7 He talked about meeting Wanda. He talked about receiving
8 revelation. He talked about the first time he saw me. And he
9 talked about the future. He talked about how we would all
10 appear when he came out of hiding, so to speak. He talked
11 about the different jobs and occupations he had held. He
12 talked about a lot of things.

13 Q. You know an awful lot about Mr. Mitchell and
14 Wanda Barzee?

15 A. Yes.

16 Q. They told you their whole life story practically?

17 A. Yes.

18 Q. You know about their marriages, they both had
19 several, about their children?

20 A. (Witness indicates by nodding head up and down.)

21 Q. You know their children's names or at one time you
22 knew their children's names?

23 A. Yes.

24 Q. I mean, he told you good stuff about himself and
25 bad stuff about himself?

1 A. Yes.

2 Q. Did he -- what did he tell you about the
3 government?

4 A. He said that the government was corrupt and that
5 they served the devil and that they were of the world, that
6 America had fallen from being a God-fearing country and that
7 they were no longer.

8 Q. What did he tell you about the LDS Church?

9 A. He said that the LDS Church will be punished more
10 than anyone because they have the most light and truth and
11 knowledge, and that they have the truth but they're not
12 willing to live it, and that when the time had come that many
13 of them would have the strength to breakaway and follow him.

14 Q. And what did he think he was? I mean, what did he
15 tell you that he thought he was?

16 A. He told me that he was a prophet and that he was
17 the Davidic king.

18 Q. And who's -- what's the Davidic king? What did he
19 explain that was going to be?

20 A. He said that he was God's voice on the earth and
21 that he would reign over the children of God until Christ
22 came, at which point he would continue to be Christ's
23 mouthpiece to the world.

24 Q. Did he talk about the antichrist?

25 A. Yes.

1 Q. And what was his position with the antichrist?

2 A. He said that he would one day fight the antichrist.

3 Q. And what was going to be the outcome of all that?

4 A. Was that he would be the one to kill the
5 antichrist.

6 Q. Did he -- and he read you the contents of the Book
7 of Isaiah --

8 A. Of --

9 Q. Emmanuel of David Isaiah?

10 A. Yes.

11 Q. And how many times did he read it to you?

12 A. Many times. I don't know that I could put a number
13 on it.

14 Q. And he talked about it a lot, too?

15 A. Yes.

16 Q. Did you pray together every day?

17 A. Yes.

18 Q. And you sang together every day?

19 A. Yes.

20 Q. What kind of things did you sing?

21 A. Wanda had compiled a book of religious songs from
22 many different religions, and we would just choose out of the
23 songs that she compiled.

24 Q. How much time during the day did you spend singing
25 or did he spend singing?

1 A. I guess it just depended on the day. Sometimes it
2 was just one or two songs. Sometimes there was no singing.
3 Sometimes if he was working, he would sing or if he -- he
4 just -- I mean, like there was usually reason. It wasn't just
5 because he couldn't contain himself. It was because he wanted
6 to sing. He felt like singing.

7 Q. And you sang with him sometimes or not very often?

8 A. Well, I mean, it wasn't like a duet, so to say.
9 But, I mean, they would -- he would have us all sing together
10 like when we prayed.

11 Q. Did he have trouble sleeping at night? Let me ask
12 it a different way. Did he get up during the night?

13 A. Yes.

14 Q. Were you all sleeping in the same spot?

15 A. Yes.

16 Q. How many times in the night would he get up?

17 A. I couldn't put a -- I don't know. I'm a pretty
18 heavy sleeper myself.

19 Q. I mean, do you have any kind of guess? Do you
20 imagine it was more than once a night every night?

21 A. Maybe once or twice. I think it was just to go to
22 the bathroom.

23 Q. Well, could it be as much as six or seven times a
24 night?

25 MR. TOLMAN: Your Honor --

1 THE WITNESS: I don't know.

2 MR. TOLMAN: -- I think she answered once or twice.

3 THE COURT: This is cross-examination. He's
4 entitled to probe.

5 The question is, could it have been six or seven?

6 THE WITNESS: To my knowledge, I mean, I don't
7 remember. I was asleep. But I think it was only once or
8 twice. Like, that's the best of my knowledge. I couldn't
9 tell you anymore.

10 Q. BY MR. STEELE: There's a couple days after you
11 were found, you were recovered. What word would you use for
12 that day besides wonderful?

13 A. Triumphant.

14 Q. Or do you say, I was recovered? I was found? I
15 was captured? What was the phrase that you would use for that
16 day?

17 A. I came home.

18 Q. So a couple days after you came home, you
19 participated in an interview?

20 A. Yes.

21 Q. It took a couple days?

22 A. Yes.

23 Q. I mean it went a couple days?

24 A. Yes.

25 Q. And lasted half a dozen hours, something like that?

1 A. I don't know how long it lasted. It was lengthy.

2 Q. Okay. And you told them -- and this was with
3 Dr. Dietz and Dr. Blom?

4 A. Yes.

5 Q. You told them a great many things.

6 A. Yes.

7 Q. And this is a long time ago. I mean, this is in
8 2003.

9 A. Right.

10 Q. If you had said at that time he got up six or seven
11 times a night, I mean, would that -- if you said that, you
12 would have been telling them the truth.

13 A. Yes. If I said that, then that's true. It's just
14 been a long time. I don't sit and think about it every day.

15 Q. Thankfully, I'm guessing.

16 A. Yes.

17 Q. And he got up and exercised was your description to
18 Dr. Dietz. Is that something you remember? Do you have a
19 memory of that?

20 A. Now that you bring it up, I vaguely remember
21 something like that.

22 Q. Okay. Hopping on one leg?

23 A. It wasn't like running or lifting weights or
24 exercising as we think of it.

25 Q. What was it like, as best you can remember?

1 A. It involved deep breathing, like squatting,
2 standing and squatting, I think. Hopping could have been part
3 of it.

4 Q. I'm sorry. I didn't --

5 A. Hopping could have been part of it. I don't really
6 remember that much.

7 Q. And that's all you remember of that?

8 A. Yeah.

9 Q. Okay.

10 You gave a whole list of things of adjectives
11 describing him. I didn't hear you say hypocrite, but it
12 sounded like that might be one of the words.

13 A. Yes.

14 Q. Tell me what a hypocrite is.

15 A. A hypocrite is someone who preaches one thing, like
16 preaches like not to smoke and then turns around and smokes.

17 Q. Did he ever talk to you about the carnal man?

18 A. Yes.

19 Q. What was that about?

20 A. He said that the carnal man was sensual and
21 devilish and that all of us possessed carnal man inside us.
22 There's a part of us that are all carnal.

23 Q. And he acknowledged that he had trouble with that?

24 A. Yes.

25 Q. It was clear that he had trouble with that to you.

1 A. Yes. Yes.

2 Q. Yes. You used the word, I believe it was the
3 San Diego story, the start of the Kemp story that he acted as
4 if he presented himself as an investigator.

5 A. Yes.

6 Q. Tell us what that term means.

7 A. An investigator in the LDS Church is someone that
8 is interested in learning more, that they're investigating the
9 beliefs of the LDS doctrine.

10 Q. How often did you eat during the day?

11 A. Usually it was once. But there was -- there were
12 different periods of time when sometimes it would be more
13 depending on -- it was -- generally when we ate was when there
14 was food. When he was in prison or jail when he was in
15 San Diego for that period of a week, there was nothing to eat.
16 We collected rain water and drank rain water for a few days.

17 Q. In San Diego, you described him getting dressed in
18 a specific way to go back to the Kemps' house?

19 A. Yes.

20 Q. Did he tell you what happened when he got there?

21 A. Um --

22 Q. I'm sorry. Yes. There are two different ways; one
23 where he dressed as normally as he could under the
24 circumstances, and the other where he dressed in, not in a
25 tunic, but in dark regular clothes, something like that?

1 A. Yes.

2 Q. Okay. Tell me about what he said happened when he
3 went back that second time?

4 A. He said that he looked for a way to get in and that
5 everything was locked, and he found -- was it a window or
6 sliding door? And he started to open it and he heard like
7 loud snoring inside. And I think he said it was like an older
8 brother or it was a male figure in the room, and that scared
9 him, so he left.

10 Q. Did he talk -- tell you something like before he
11 went that she's the one?

12 A. Yes.

13 Q. What did that mean?

14 A. It meant that he was going to do the same thing to
15 her that he did to me.

16 Q. How did you feel about that?

17 A. Heartbroken.

18 Q. When he came back, did he say something like she's
19 not the one?

20 A. He said that the Lord was just testing his faith, I
21 think. I mean, that's what I remember him saying.

22 Q. What would he have meant by that in this context,
23 do you know?

24 A. That the Lord was just preparing him, that it was
25 all in preparation for the next young woman.

1 Q. And let me see if I understand what that might have
2 meant. Was it your impression that he meant he initially
3 thought she was the one, but the Lord threw up enough
4 obstacles that she must not have been? Is that part of that
5 meaning? Is that the test?

6 A. Well, it was -- it was just like a preparation,
7 like a step, like just another step to becoming more prepared,
8 to become -- just to show that he wasn't ready for -- to get
9 to kidnap the next young girl.

10 Q. Did he come back and say, I failed?

11 A. I don't remember.

12 Q. Or was it your impression that he said, the Lord
13 didn't -- the Lord didn't want me to accomplish this?

14 A. It was -- I mean, more like the Lord didn't want me
15 to accomplish this. I mean, it wasn't like he wasn't
16 distracted about it or anything.

17 Q. His arrest, you talk about, he told you that he got
18 beer, he got some prescription meds.

19 A. (Witness indicates by nodding head up and down.)

20 Q. And got pretty high?

21 A. (Witness indicates by nodding head up and down.)

22 Q. What was the weather like that day?

23 A. I don't remember it being rainy. I don't remember
24 it.

25 Q. Didn't he tell you that his clothes got wet?

1 A. I don't remember. I mean, I don't -- I just don't
2 remember the weather. I mean, it could have, but I just....

3 Q. There's something -- there's a pretty interesting
4 thing that happened to him when he broke into the church. He
5 got separated from his clothing?

6 A. Yes.

7 Q. Tell us about that. What happened? What did he
8 tell you that happened?

9 A. I think he wet his clothes, wet his robes, so he
10 took them off. And there was the hole right in the crotch
11 area. So I don't think that the thermal underwear got wet,
12 but, I mean, it wouldn't be unnatural for him to just -- well,
13 I mean, like he had control of his bladder. But, I mean,
14 there had been times he'd just decided to go.

15 Q. Did he tell you that the clothes ended up in a room
16 that was locked and he couldn't get back into that room?

17 A. I don't remember that.

18 Q. Okay.

19 He talked to you about two other women that had
20 been approached, he had approached prior to you?

21 A. Yes.

22 Q. And do you remember him, what he said about Kelly
23 and/or Julie?

24 A. I remember he talked about Kelly, that she was an
25 African American, and that he -- that she was a special

1 daughter of God, but that she -- I mean, she wasn't -- like,
2 she wasn't practicing monogamy, and that he talked to her.
3 And I think he said he lived with her for a little while. I
4 don't exactly remember because it's been so long. He talked
5 about how one time he came in and she had been with another
6 man, and he was like very, very upset with her, very mad at
7 her.

8 And he told me that there had been one last time
9 that he had gone to see her to invite her up to their teepee
10 they had hidden up the canyon and to spend the weekend with
11 them up there, and she said, no, I believe.

12 Q. And he was hoping that she would become a plural
13 wife?

14 A. Yes.

15 Q. How old was she, did he tell you?

16 A. I think she was in her 30s. I mean, she wasn't,
17 she wasn't a teenager.

18 Q. Right.

19 A. She wasn't a young girl.

20 Q. What about Julie? What did he tell you about
21 Julie?

22 A. Julie, he talked about having met her in a shoe
23 store, I believe it was, and that she was engaged to some
24 fellow. But that she had come from -- she had run away from
25 being part of a polygamist family, and so she knew a lot about

1 polygamy and how their lifestyle is, and that he had decided
2 that she was going to be one of his wives. And when he went
3 back, she was no longer working there.

4 Q. Did -- going back to San Diego -- well, even before
5 that, he used the word plunder --

6 A. Yes.

7 Q. -- in regard to wives but also food and such
8 things.

9 A. Yes.

10 Q. Do you remember him saying anything about he just
11 couldn't do that anymore, go shoplift in San Diego?

12 A. Yes.

13 Q. And how did he come to say that, do you know?

14 And let me ask a better question than that that
15 might be easier. Did he say, I don't believe it's right to
16 plunder?

17 A. No.

18 Q. Did he say, I'm too -- this is too stressful, I
19 can't do this anymore?

20 A. Gosh, I completely forgot about that. But I think
21 he said that it was just too dangerous, I think. I don't
22 remember. I mean, it was -- I just don't think about it every
23 day. I don't remember.

24 Q. And I understand that. And that's a fine answer.
25 Whatever you remember, okay?

1 A. (Witness indicates by nodding head up and down.)

2 Q. And he decided to come back to Salt Lake. What did
3 he tell you about that?

4 A. Well, it wasn't completely him. It was actually
5 mainly me. I had hope because California, I felt it was so
6 far away and so cut off that nobody would ever find me. And
7 even if it took 20 years to find me, I mean, I just felt the
8 chances would be better in Salt Lake.

9 And so I just asked him about it. And I said I
10 felt like -- because he had used religion to justify, I mean,
11 pretty much anything he wanted to get away with, and so I
12 decided to try to use his tactic. And I said, I think, like,
13 I just have a very strong feeling about going back to Salt
14 Lake. What do you think? Like, what do you feel like God's
15 telling you?

16 And then he eventually was like, yeah. But how are
17 we going to do it? And he had told me about how he had
18 hitchhiked all over the place. And I said, well, why don't we
19 hitchhike back? I mean, you said that I had to experience all
20 things, you know, sink below all things to rise above all
21 things. Well, shouldn't hitchhiking, shouldn't I experience
22 that, too? And so then that's how the decision was made to
23 hitchhike back to Salt Lake.

24 Q. Did he tell you, did he talk to you in religious
25 terms about what he thought would happen on coming back to

1 Salt Lake?

2 A. About the journey or what would happen, like, once
3 we got back here, like what the plans for the future would be?

4 Q. What might happen to him.

5 A. What might happen to him?

6 Q. Did he have some kind of religious story about what
7 would happen to him coming back here?

8 A. I mean, he had one for, like, the future.

9 Q. Did he talk about martyrdom with you?

10 A. Yes.

11 Q. What did he say about martyrdom?

12 A. He said that in seven years, you know, he would
13 come forth with Wanda and his seven new wives, and we would
14 all testify in his behalf. And we would come out in great
15 power and glory. And that there would be many people who
16 believed us, but many people who didn't believe us. And there
17 would be a mob that would come and stone him, and he would lay
18 in the streets for three days being dead, and then he would
19 rise up and he would be untouchable. And that is when he
20 would fight the Davidic king or -- no not Davidic king, fight
21 the antichrist, and that's when he would kill the antichrist.

22 Q. And did he tell you who he thought the antichrist
23 might be?

24 A. No. Well, he -- no. I don't think he said that,
25 like, this exact person is going to be the antichrist. He

1 said that the deceased President Hinckley was a type of
2 antichrist, but he didn't mean that he was the actual
3 antichrist, the one that he would fight.

4 Q. At the library, the time that you all were
5 approached by a detective and you were talking about that in
6 your direct exam --

7 A. Yes.

8 Q. -- what were you at the library doing? Do you
9 remember that?

10 A. He was looking for maps to go to San Diego and the
11 area of California.

12 Q. Okay. Okay. And you had found maps and were
13 looking at maps?

14 A. (Witness indicates by nodding head up and down.)

15 Q. You said that he told you he would kill you if you
16 tried to leave?

17 A. Yes.

18 Q. Did he talk about an angel --

19 A. Yes.

20 Q. -- if you tried? What did he tell you about an
21 angel?

22 A. He said that an angel would strike me down with a
23 sword. But he also told me that he would be that angel.

24 Q. He had a knife?

25 A. Yes.

1 Q. And, you know, so you put those things together.
2 That makes sense; right?

3 A. Right.

4 Q. And you were worried about him hurting you?

5 A. Right.

6 Q. Did you see the knife much after that first day?

7 A. I saw it on different occasions. He didn't wear it
8 every day, but he had it with him, like I saw it. It
9 wasn't -- I mean, like he used it.

10 Q. Did he ever tell you that he was glad he didn't
11 have to hurt anyone?

12 A. He said he was relieved. But that if the time came
13 when he had to, he wouldn't be afraid to use it.

14 Q. Did he use the aka Peter Marshall?

15 A. Yes.

16 Q. Did he tell you who Peter Marshall was?

17 A. I wasn't aware it was related to anybody other than
18 himself.

19 Q. Okay. He told you about walking away from death.
20 And he and Wanda told you about their travels?

21 A. (Witness indicates by nodding head up and down.)

22 Q. And what -- how long had they been traveling and
23 what were they doing while they were traveling?

24 A. Wait, walking away from death?

25 Q. Well, yeah. I asked that really poorly.

1 Did they --

2 THE COURT: Why don't you ask her if he said he was
3 going to walk away from death, if she remembers.

4 MR. STEELE: Yes. I'll try something altogether
5 different here.

6 Q. BY MR. STEELE: What were they doing with their
7 lives before he came and took you?

8 A. Well, he had gone all over the country. And he
9 said that they were just -- they were trying to do what God
10 had wanted them to do.

11 Q. How long had they been doing that? Did you get a
12 sense of that?

13 A. It had been for -- I mean, like there were periods
14 of time when they stayed with his mother, and I believe Wanda
15 stayed with her mother before and when they stayed with some
16 other people, as well. But they'd been, I mean, it had been a
17 few years. But they would leach onto his mother or her mother
18 or another family whose policy I guess was that, you know, I
19 won't turn anyone away from my door. And they'd say, I won't
20 turn anyone away, and they can stay with me.

21 So I think they took advantage of other people's
22 generosity. But he also had been hitchhiking and traveling
23 around for, like, a few years, I think.

24 Q. He pushed a handcart some distance --

25 A. Yes.

1 Q. -- through this? I mean, is 10 years a good guess
2 that they had been doing this kind of thing?

3 A. Maybe. I don't know. It could have been five,
4 ten, I'm not sure.

5 Q. It's a number of years that we're talking about.

6 A. It was a longer period of time, because, I mean,
7 they would always come back and stay at someone's house for a
8 while and then go out again. I mean, when they took me was
9 the first time that they stayed in a camp, so to speak, for an
10 extended period of time, like, without outside help, without,
11 like, going back to his mother or his father or her mother.

12 Q. Was there a time that he stayed with Dr. West?

13 A. Yes.

14 Q. Who is Dr. West?

15 A. Dr. West, well, I never met him, but he wrote a
16 book on natural healing. And it was something that Brian
17 believed in. And he was the one that said, you know, as long
18 as I have like a house or as long as I have food, you know,
19 I'm not going to turn somebody away.

20 Q. Did Brian talk to you about lymphology?

21 A. Yes.

22 Q. And this was associated with Dr. West?

23 A. Yes.

24 Q. What did he say about lymphology?

25 A. He just said that it was true, and the

1 pharmaceutical companies, they all knew it was true, but they
2 would be turning away billions of dollars, and they weren't
3 about to do that, so they weren't going to acknowledge that as
4 being true.

5 Q. What kinds of things did lymphology involve?

6 A. A lot of, like when -- if he exercised, like,
7 that's what it was, the deep breathing, like hot expansion and
8 contraction, like rubbing something, like eating pure foods.

9 Q. Well, and so -- I mean, the exercising at night,
10 for instance, it didn't look like normal exercising. That
11 might have been lymphology?

12 A. Yes.

13 Q. Was it your understanding that it was lymphology?

14 A. Yes.

15 Q. Okay. And he also said, told you that that's when
16 he got revelations, one of the times, the conditions under
17 which he got --

18 A. I don't remember exact times anymore, but I'm sure
19 it was.

20 Q. He'd also get them when he gave those blessings.
21 That's what he told you?

22 A. Yes. I mean, he got them sporadically. Well, I
23 mean, just I don't think it had a connection with him doing a
24 certain something. I think it's if he wanted something,
25 that's when he got revelation.

1 Q. You didn't trust his revelations?

2 A. No.

3 Q. Okay.

4 If I might have a moment, Your Honor?

5 THE COURT: You might.

6 (Time lapse.)

7 Q. BY MR. STEELE: What are the Seven Diamonds Plus
8 One? Do you remember that?

9 A. Yes. It was the different books he believed in.
10 I'm not sure if I can name them all still. But it was like
11 the Book of Mormon, the Bible, King James Version of the
12 Bible, the Golden Seven Plus One, the book that Dr. West
13 wrote, I think that's what it's called. The Doctrine and
14 Covenants, Pearl of Great Price, the Book of Isaiah, there was
15 a translation that he had that he always read out of. And
16 there was another book, The Final Quest by Rick Joyner. And
17 then the Plus One was his Book of Emmanuel David Isaiah.

18 Q. And these were his religious sources, the things
19 that he referred to?

20 A. Yes.

21 MR. STEELE: That's all I have, Your Honor.

22 THE COURT: Thank you, Mr. Steele.

23 Do you have any redirect, Mr. Tolman?

24 MR. TOLMAN: Just briefly, Your Honor.

25 //

REDIRECT EXAMINATION

BY MR. TOLMAN:

Q. Elizabeth, was religious language part of his every day speech?

A. Sometimes.

Q. Was he able to turn it off and on?

A. Yes.

Q. What about in front of Wanda?

THE COURT: You mean with respect to religious language?

MR. TOLMAN: Yes.

Q. BY MR. TOLMAN: With respect to religious -- did he use religious language or speech in front of Wanda?

A. Yes.

Q. There are some religious terms that defense counsel has brought up that may be, it may seem foreign or unusual to those that are outside the LDS culture. Would you agree with that?

A. Yes.

Q. What is your religion, Elizabeth?

A. I am LDS.

Q. And in that religion, is it common to hear words such as giving blessings?

A. Yes.

Q. Or revelations?

1 A. Yes.

2 Q. Going on missions?

3 A. Yes.

4 Q. Believing in more religious books than just the
5 Bible?

6 A. Yes.

7 Q. These were not necessarily foreign terms to you?

8 A. No.

9 Q. Or unusual?

10 A. No.

11 Q. In fact, you're preparing to go on a mission
12 yourself?

13 A. Yes.

14 Q. Was Wanda there for the marriage ceremony?

15 A. She was outside the tent door.

16 Q. After reflecting on that particular part, the
17 marriage ceremony, what do you believe was the importance of
18 that?

19 A. I think it was to placate Wanda and to --

20 MR. STEELE: Objection, Your Honor, as to the
21 speculation.

22 THE COURT: She can testify as to her impressions
23 and understanding.

24 Go ahead.

25 THE WITNESS: It was to make it so it looked like,

1 giving the appearance that he was doing what the Lord had told
2 him to do.

3 Q. BY MR. TOLMAN: Was this a common pattern with the
4 interaction you observed between Wanda and the defendant?

5 A. Yes.

6 Q. That he would do something religious in order to
7 appease Wanda?

8 A. Yes.

9 Q. Was it always, though, to get something he wanted?

10 MR. STEELE: Objection, your Honor; speculation.

11 THE COURT: Again, the impression of understanding.
12 Overruled.

13 THE WITNESS: Yes.

14 Q. BY MR. TOLMAN: Things such as sex, drugs, alcohol?

15 A. Yes.

16 Q. Notwithstanding he used religious language and the
17 interactions with he and Wanda, was it a constant focus of his
18 while you were with him to not get caught?

19 MR. STEELE: Objection; leading.

20 THE COURT: It is leading. Rephrase.

21 Q. BY MR. TOLMAN: Was he concerned about getting
22 caught?

23 A. Yes.

24 Q. How much of a significant focus was it of his?

25 A. It was a big focus. I mean, he said that he would

1 kill anybody who came into the camp or he would kill me if I
2 tried to escape. He forced me to wear a headdress and a veil
3 and another veil covering the mouth part, so it covered like
4 my entire -- my entire head was covered.

5 Q. Defense counsel brought up the West family. Did
6 you learn from the defendant that Mr. West had a personal
7 policy not to turn someone away who needed food or shelter?

8 A. I didn't learn that directly from the Wests. I
9 learned it from --

10 Q. From the defendant?

11 A. Yeah.

12 Q. Did he tell you about that?

13 A. Yes.

14 Q. Why did he tell you about that?

15 MR. STEELE: Objection; calls for speculation.

16 THE COURT: Why does she think he told her.

17 Q. BY MR. TOLMAN: Let me ask you this. Did he tell
18 you he took advantage of that policy?

19 MR. STEELE: Objection; leading.

20 THE COURT: Overruled. You can answer that
21 question.

22 THE WITNESS: Well, he didn't just flat-out say, I
23 took advantage of him. But he did say that he knew that they
24 wanted him to leave and that he didn't and that he continued
25 to stay there for a while.

1 Q. BY MR. TOLMAN: Elizabeth, was the defendant during
2 your nine months, was he a hypocrite?

3 A. Yes.

4 MR. TOLMAN: No further questions.

5 THE COURT: Thank you, Mr. Tolman.

6 Any recross, Mr. Steele?

7 MR. STEELE: If I might have just a moment.

8 THE COURT: You may.

9 (Time lapse.)

10 RECROSS-EXAMINATION

11 BY MR. STEELE:

12 Q. There were -- you came down into Salt Lake City
13 from the mountains a couple of times?

14 A. Yes.

15 Q. Once you were all at a party?

16 A. Yes.

17 Q. And he got run off after getting in a religious
18 argument with somebody?

19 A. Yes. He was also drunk and high on the drug
20 Amaseth (sic).

21 Q. And you spent time in a couple of restaurants on
22 occasion?

23 A. Yes.

24 Q. The library?

25 A. Yes.

1 Q. Stayed overnight with a couple different people?

2 A. Yes.

3 Q. And how often were you walking the streets of
4 Salt Lake City?

5 A. Not very often.

6 Q. Half a dozen times?

7 A. Maybe.

8 MR. STEELE: That's all I have, Your Honor.

9 THE COURT: Thank you. Are we done?

10 MR. TOLMAN: No further redirect, Your Honor.

11 THE COURT: All right. Thank you all.

12 Thank you, Ms. Smart, you may step down. And
13 you're excused.

14 We'll be in recess as to this phase of the
15 competence hearing. Thank you very much.

16 (Whereupon, the court proceedings were concluded.)

17 * * * * *

18

19

20

21

22

23

24

25

1 STATE OF UTAH)
2) ss.
3 COUNTY OF SALT LAKE)

4 I, KELLY BROWN HICKEN, do hereby certify that I am
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of
7 the foregoing matter on October 10, 2009, and thereat reported
8 in Stenotype all of the testimony and proceedings had, and
9 caused said notes to be transcribed into typewriting; and the
10 foregoing pages number from 3 through 71 constitute a full,
11 true and correct report of the same.

12 That I am not of kin to any of the parties and have
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this ____ day of
15 _____ 2009.

16
17
18
19
20
21
22
23
24
25

KELLY BROWN HICKEN, CSR, RPR, RMR